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Supreme Court of the United States

OCTOBER TERM, 1956

No. 282

ROSA MAYER, as Administratrix of Benjamin Mayer,
Petitioner,

against

CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under a certain agreement made on September 1, 1903, by and between the WESTERN PACIFIC RAILWAY COMPANY and the BOWLING GREEN TRUST COMPANY, WESTERN PACIFIC RAILROAD CORPORATION, ET AL.,
Defendants,

and

THE PEOPLE OF THE STATE OF NEW YORK,
Intervening Defendant-Respondent.

PETITIONER'S REPLY BRIEF

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INDEX

Cases Cited

PAGE

Brown v. Pennsylvania Canal Co., 235 Fed. 269, 247 Fed. 467, 279 Fed. 417, 3rd Cir. 3

Erie R. R. v. Tompkins, 304 U. S. 64 ..... 4, 6

Fidelity Union Trust Co. v. Fields, 311 U. S. 169 4

Re Fielding, 96 Fed. 800 2

Re Gubelman, 79 Fed. 2d 976, 2d Cir. 3

Re Interborough Consolidated Corp., 206 Fed. 2d 30, 2d Cir. 3

Louisville & Nashville R. R. v. Robin, 135 Fed. 2d 704, 5th Cir. 3, 4, 5

Re Paramount Publix Corp., 72 Fed. 2d 219, 2d Cir. 2

Re Searles, 166 Fed. 2d 475, 2d Cir. 2

Re Vulcan & Reiter, Inc., 162 Fed. 2d 94, 2d Cir. 3, 5

West v. A. T. & T. Co., 311 U. S. 223 4

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PETITIONER'S REPLY BRIEF

Petitioner is replying to Respondent's brief because Respondent would have this Court ignore well established truths and have it appear that Petitioner is relying on technicalities to obtain the relief she seeks.

Among the established truths are the following:

1. That when the Congress recognized the urgent need for the exercise of federal jurisdiction over an insolvent's

properties in the liquidation thereof for the benefit of creditors throughout the land, it created Courts of Bankruptcy. In the course of the latter's administration of the affairs of insolvents, certain principles of equity were evolved which became applicable when federal courts undertook similar tasks in what has been described as equity receiverships. In both cases, creditors, secured and unsecured, were required to prove their claims as creditors before they could hope to share in the assets which had come to hand. Where bondholders were concerned, they were required to prove their claims as in the case of any other creditor. Where a bondholder omitted to do so, the Trustee under the mortgage indenture could act under its proved claim for a deficiency to preserve the bondholder's interests (*Re Paramount Publix Corp.*, 72 Fed. 2d 219 2d Cir.). Before the bondholder could collect his share from the mortgage trustee, he was nevertheless required to produce his bond as proof of his claim against the insolvent. Therefore, it was not because he happened to be the beneficiary of a trust but because he was a proved creditor of the insolvent that he shared in the insolvent's estate.

2. When dividends payable to creditors, secured or unsecured, remained unclaimed and were paid into court, with no authority in the Clerk as statutory trustee of the fund, to distribute the same, Sec. 66 was incorporated into the Bankruptcy Act of 1898 to permit the Court to further administer the unclaimed dividends and distribute the same among those proved creditors whose claims still remained to be paid in full (See *Re Searles*, 166 Fed. 2d 475, 2d Cir. and *Re Fielding*, 96 Fed. 800 cited therein). Subsequently 28 U. S. C. 2042 was enacted to enable a federal court of equity to determine the claims of such persons as sought the distribution of the moneys on deposit as aforesaid.

Altho no legislation was enacted to embrace unclaimed dividends arising out of equity receiverships, federal courts, in the exercise of their equity powers, not only indicated their approval of the equitable principles embraced in Sec. 66b of the Bankruptcy Act, but applied them to the unclaimed dividends on hand. (See *Louisville & Nashville R. R.* v. *Robin*, 135 Fed. 2d 704, 5th Cir. and the cases enumerated in Petitioner's Appx. E, p. 24a, and the reference to the $7000 unclaimed fund in *Re Interborough Consolidated Corp.*, 206 Fed. 2d 30, 2d Cir., which arose out of a Mortgage Trustee's sale of collateral under a trust agreement.)

In *Re Gubelman*, 79 Fed. 2d 976, 2d Cir., the Court held that a federal court under Sec. 66b of the Bankruptcy Act was empowered to act *sua sponte* or at the instance of a qualified creditor willing to undertake the trouble and expense of effecting the Court's distribution of the unclaimed dividends.

In *Re Vulcan & Reiter, Inc.*, 162 Fed. 2d 94, 2d Cir., the Court held that a creditor who had received all that he had bargained for in the course of an agreement of settlement or composition was not a creditor who could qualify as a person whose claim still remained to be paid in full; that he could not hope to share in any fund of unclaimed dividends which arose from a fellow creditor's failure to claim the dividends pro rated to him (See also *Brown* v. *Pennsylvania Canal Co.*, 235 Fed. 269, 247 Fed. 467, 279 Fed. 417, 3rd Cir.).

3. Notwithstanding the fact that in most cases of equity receiverships, including the instant case of *Equitable Trust Co.* v. *Western Pacific Railway and Denver & Rio Grande R. R. Co.*, federal jurisdiction was founded on diversity of citizenship, the several States in the United States and their courts have invariably pursued a hands-off policy. Petitioner does not know of any case reported

in standard law reports where anyone had insisted on having a State law relating to trusts and trust beneficiaries forced on the federal courts in the course of their liquidation of the affairs of an insolvent. In each case, a creditor's right to share in the insolvent's assets has been dependent on his proofs as a creditor of the insolvent and not on his proof as a beneficiary under a certain trust agreement.

The instant case appears to be the first case where the Supreme Court rule on diversity of jurisdiction (*Erie R. R.* v. *Tompkins*, 304 U. S. 64) was availed of to have a vague pronouncement of a State Court forced on a federal court to control its liquidation of an insolvent's affairs.

4. Respondent's silence and failure to meet petitioner's charge that the Court of Appeals herein had not complied with the conditions and requirements which the Supreme Court, in its wisdom and foresight, had imposed on federal courts for the latter's use of the rule of diversity of jurisdiction as liberalized by *Fidelity Union Trust Co.* v. *Fields*, 311 U. S. 169 and *West* v. *A. T. & T. Co.*, 311 U. S. 223 to embrace pronouncement of inferior courts that might be acceptable as authoritative State law, may be said to confirm petitioner's charge on that score.

Petitioner believes that it is sound law that before a federal court can say that it was bound to adhere to this Court's rule on diversity of jurisdiction as liberalized, there should be some showing on its part that it had complied with the requirement that it first "ascertain" the facts back of those pronouncements.

That the true facts in the two State cases were not first ascertained is borne out by the statement of the State court in the *Moscowitz* case that the facts in the federal case of *Louisville & Nashville*, *supra*, were so different

from those present in the *Moscowitz* case that the principles and law of the federal case were not applicable to the State case (Petitioner's Appx. F., p. 26a). It logically follows that if the facts in the State case were so different from those in the Federal case, then the law of the State case would not be applicable to the Federal case. And since the facts and the principles of equity and federal law of the *Louisville & Nashville R. R.* case are so strikingly similar to those in the instant or *Western Pacific Ry.* case, it must follow that the *Moscowitz* case cannot be analogous to the instant case.

And so with the other State case of *Continental B. & T. Co.*, where the facts in a referee's report have just come to light as an appendix to Respondent's brief. The referee therein has displayed such a misunderstanding of what was involved in the *Louisville & Nashville* case that one can be persuaded to accept his view that the facts in the *Continental* case were so different from those in the *Louisville & Nashville* case as to make the law of the two cases inapplicable to one another. There again the ultimate result would be that the law in the *Continental* case, would be inapplicable to the instant or *Western Pacific Ry.* case.

Apart from the disclosures on the face of the opinions in the two State cases, the examination of the court files in the *Moscowitz* case conclusively showed that the true facts in that case had brought it in line with the composition case of *Vulcan & Reiter*, *supra*, to which the instant case does not bear any likeness whatsoever.

Conclusion

From the foregoing, it must be evident that petitioner has not merely resorted to a technicality to persuade the Court to grant its writ herein. Petitioner has shown

what has actually resulted from the lower Court's omission to comply with a requirement which this Court imposed on federal courts when they undertake to make use of a liberalized version of the *Erie R. R.* v. *Tompkins* rule on diversity of jurisdiction, to wit, that they "ascertain" the true facts which lie back of the pronouncements in the State cases before they accept and make use of them as authoritative State law. A determination and judgment in her favor herein has been overturned to her prejudice and that of the 95% of bondholders of the Western Pacific Ry. Co. who have appeared herein. New law for the Court of Appeals for the Second and other circuits appears to have been made herein in contrast to the law heretofore established and followed with confidence as to its correctness.

Respectfully submitted,

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